

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2021 DEC 22 AM 11:23

CLERK

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RICHARD MARTELL,

Plaintiff,

v.

Case No. 2:21-cv-00188

COSTCO WHOLESALE CORPORATION,
CHRIS STAFFORD, and SCOTT BACON,

Defendants.

ORDER OF DISMISSAL

A review of the docket in this case reveals the following:

1. On July 29, 2021, Defendant Costco Wholesale Corporation (“Costco”) removed Plaintiff Richard Martell’s action from Vermont Superior Court to this court. (Doc. 1.)
2. On August 5, 2021, Defendants Costco, Chris Stafford, and Scott Bacon moved to dismiss Plaintiff’s Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. (Doc. 5.)
3. On September 14, 2021, Plaintiff’s Complaint was received and filed in this court. (Doc. 16.)
4. On November 2, 2021, the court granted Defendants’ unopposed motion to dismiss. (Doc. 24.) Plaintiff was granted leave to file an Amended Complaint no later than December 3, 2021, and warned that failure to file an Amended Complaint would result in dismissal of the case. *Id.* at 4.
5. No further filings have been received as of the date of this Order.

The Federal Rules of Civil Procedure authorize dismissal of an action when “the plaintiff fails to prosecute or to comply with these rules or a court order[.]” Fed. R. Civ. P. 41(b). Although Rule 41(b) does not define “failure to prosecute,” the Second Circuit has held that “[i]t can evidence itself either in an action lying dormant with no significant activity to move it or in a pattern of dilatory tactics.” *Lyell Theatre Corp. v. Loews Corp.*,

682 F.2d 37, 42 (2d Cir. 1982). Because Plaintiff has not filed an Amended Complaint, this case is hereby DISMISSED for failure to prosecute.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 22nd day of December, 2021.

/s/ Christina Reiss

Christina Reiss, District Judge
United States District Court